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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID MICHAEL QUINN,

Defendant and Appellant.

A145690

(Solano County
Super. Ct. No. FCR295158)

Defendant David Michael Quinn appeals from an order of the superior court denying his petition to recall his felony sentence for receiving stolen property and to resentence him to a misdemeanor. (Pen. Code, § 1170.18, subd. (a).)¹ The petition was brought under a provision of Proposition 47, an initiative measure the electorate passed in November 2014. Proposition 47 “reduced certain drug-related and property crimes from felonies to misdemeanors” and “also provided that, under certain circumstances, a person who had received a felony sentence for one of the reduced crimes could be resentenced and receive a misdemeanor sentence.” (*People v. Morales* (2016) 63 Cal.4th 399, 403.) Proposition 47 reduced receiving stolen property from a felony to a misdemeanor for property valued at \$950 or less. (§ 496, subd. (a).)

At issue on this appeal is whether the petitioner or the prosecution bears the initial burden of proof in presenting evidence of the property’s value on a Proposition 47

¹ All further statutory references are to the Penal Code, unless otherwise indicated.

petition to reduce a sentence. The trial court ruled that petitioner bore the burden, failed to meet it, and denied the petition. We shall affirm the order.

Factual and Procedure Background

In July 2011, a resident reported items missing from his garage, including a camera. A year later, a pawn shop surveillance camera recorded defendant trying to pawn various items, including a camera with the victim's last name inscribed on it. Defendant told the police he tried to pawn the items for a friend who did not have the necessary identification.

In August 2012, defendant was charged with two felony counts of receiving stolen property (a camera in count one and a suitcase in count two) and alleged to have served three prior prison terms. (§§ 496, subd. (a), 667.5, subd. (b).) In September 2012, defendant pleaded no contest to two counts of receiving stolen property and admitted two prison priors. The court suspended imposition of sentence, granted probation, and placed defendant in a year-long drug and alcohol rehabilitation program. A month later, defendant absconded from the program and the court revoked probation. In June 2013, the court imposed a sentence of four years and eight months in county jail (two years for count one, eight months for count two, and one year each for the prison priors) but suspended the concluding two-year portion of that sentence in favor of mandatory supervision in a residential rehabilitation program (§ 1170, subd. (h)(5)). In January 2015, defendant was dismissed from the program after testing positive for drugs and, soon after, the court set a hearing for revocation of supervised release.

In May 2015, defendant filed the petition at issue here, seeking to have his two felony convictions for receiving stolen property resentenced as misdemeanors. The prosecution stated no objection to the designation of count two (suitcase) as a misdemeanor but asserted that the police report of the theft listed the value of "camera equipment" at \$4,500. The court said it was prepared to rule count two a misdemeanor but noted that resentencing on that count alone would subject defendant to a one-year term whereas he was currently sentenced to serve only eight months for the offense. Petitioner's counsel asked the court to refrain from ruling on the counts separately. The

court set a hearing to consider defendant's Proposition 47 petition as well as the prosecution's motion to revoke supervised release and award victim restitution.

On the subject of restitution, the prosecution presented the burglary victim's testimony that a Nikon camera, Leica camera, lens filters, and other camera equipment were taken from his garage. The victim's brother testified that the Nikon was purchased for about \$1,000 in 1972 or 1973 and he estimated the market value of the Leica, a gift from his father, to be between \$2,000 and \$7,000. Defendant presented no evidence as to the value of the stolen property. The court denied restitution because the prosecution, which had the burden of proof on that issue, failed to establish that the camera in defendant's possession was one of the two cameras described by the victim and his brother. The court also denied the Proposition 47 petition, finding that defendant bore the burden of proof as to the value of stolen property when seeking a reduction of sentence and defendant failed to present any valuation evidence. The court revoked probation and ordered defendant to serve the balance of his sentence. Defendant timely filed notice of appeal.

Discussion

Defendant contends that on a defendant's Proposition 47 petition to reduce a conviction for receiving stolen property from a felony to a misdemeanor it is the prosecution that bears the burden of proving that the stolen property's value exceeded \$950.

Proposition 47 is silent as to who has the initial burden of establishing whether a petitioning defendant is eligible for resentencing (§ 1170.18, subd. (a)) but every court that has considered the matter has held that the burden is borne by the petitioning defendant, not the prosecution. (E.g., *People v. Johnson* (2016) 1 Cal.App.5th 953, 962; *People v. Sherow* (2015) 239 Cal.App.4th 875, 879-880; *People v. Rivas-Colon* (2015) 241 Cal.App.4th 444, 448-450; *People v. Perkins* (2016) 244 Cal.App.4th 129, 136-137.) Defendant assails these cases but we find them well-reasoned. "As an ordinary proposition: 'A party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense he is asserting.' ' ' "

(*Sherow, supra*, at p. 879, quoting *Vance v. Bizek* (2014) 228 Cal.App.4th 1155, 1163, fn. 3; Evid. Code, § 500.) Defendant, as the party seeking relief in a Proposition 47 petition, properly bears the burden of producing evidence sufficient to support the petition, and he unquestionably failed to do so.

Disposition

The order is affirmed.

Pollak, J.

We concur:

McGuiness, P.J.

Jenkins, J.